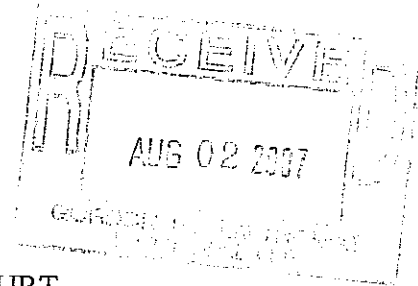


EXHIBIT B

The Honorable Marsha J. Pechman



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIANNE L. KELLEY and KENNETH
HANSEN,

Plaintiffs,

v.

MICROSOFT CORPORATION, a Washington
Corporation,

Defendant.

No. C07-0475 MJP

PUTATIVE CLASS ACTION

MICROSOFT'S OBJECTIONS
AND RESPONSES TO
PLAINTIFFS' FIRST SET OF
REQUESTS FOR ADMISSIONS

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, defendant Microsoft Corporation hereby responds to Plaintiffs' First Set of Requests for Admissions as follows:

GENERAL OBJECTIONS

1. **Limitations on Discovery.** This case is currently an individual action being brought by two individuals, and the parties have agreed to bifurcate discovery in this case such that discovery related to whether a class should be certified shall occur before any discovery going to the merits of the case will commence. Unless and until the case is certified as a class action (which Microsoft believes it should not be), discovery will be confined to

Microsoft's Objections and Responses to Plaintiffs'
First Set of Requests for Admissions
(C07-0475 MJP) — 1

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1 issues relevant to class certification. Microsoft objects to Plaintiffs' discovery requests to the
2 extent they purport to seek information that is not relevant to class certification issues.

3 2. **Privilege.** Microsoft objects to Plaintiffs' discovery requests to the extent they
4 seek information protected from disclosure by any privilege or other protection including,
5 without limitation, the attorney-client privilege, a settlement privilege, the work product
6 doctrine, or any other constitutional, statutory, common law or regulatory protection,
7 immunity or proscription from disclosure. Where information is withheld under claim of
8 privilege, Microsoft will so indicate on a privilege log. Microsoft does not intend the
9 inadvertent production of any privileged or protected information to constitute a waiver of
10 Microsoft's rights to assert any applicable privilege or protection with respect to any such
11 information or any other matter.

12 3. **Obligations Beyond Civil Rules.** Microsoft objects to Plaintiffs' discovery
13 requests to the extent they attempt to impose obligations upon Microsoft that are beyond the
14 scope of the Federal Rules of Civil Procedure.

15 4. **Proportionality.** Microsoft objects to Plaintiffs' discovery requests as
16 overbroad and unduly burdensome to the extent that they require extensive, unreasonable,
17 expensive, and labor-intensive investigation that is out of proportion to, and cannot be
18 justified in light of, the small size of the Plaintiffs' claims and the limited nature of class
19 certification issues, at least unless and until the case is certified as a class action (which
20 Microsoft believes it should not be). *See* Fed. R. Civ. P. 26(b)(1)(C).

21 5. **No Waiver.** By responding to Plaintiffs' particular discovery requests,
22 Microsoft does not waive these General Objections or any specific objection to a particular
23 request. Similarly, by stating a specific objection in response to a particular request,
24 Microsoft does not waive these General Objections. Microsoft expressly reserves the right to
25 challenge the competency, relevancy, materiality or admissibility of, or otherwise object to
26
27

1 the introduction into evidence of, any information provided in response to these discovery
2 requests.

3 6. **Supplementation.** Microsoft's responses to Plaintiffs' discovery requests are
4 based upon present knowledge, information and belief following its diligent search and
5 reasonable inquiry. Discovery and investigation are ongoing. As additional information and
6 documents become available in the course of discovery or otherwise, Microsoft may deem it
7 appropriate to supplement, alter or amend these responses and objections to Plaintiffs'
8 discovery requests and reserves the right to do so. Microsoft does not thereby undertake any
9 obligation to supplement beyond that imposed by the Federal Rules of Civil Procedure.

10 7. **Confidential and Proprietary Information.** Microsoft objects to Plaintiffs'
11 discovery requests to the extent they invade any right to privacy under any applicable state or
12 federal law or constitutional provision and/or seek trade secrets, confidential, business,
13 financial, proprietary, competitive or sensitive commercial information that is entitled to
14 protection under any applicable law including, without limitation, Fed. R. Civ. P. 26. Such
15 information and documents will not be produced absent entry of an appropriate order
16 protecting the confidentiality of the information. Microsoft is prepared to discuss with
17 Plaintiffs' counsel the appropriate scope and terms of an agreed protective order.

18 8. **Information Outside Microsoft's Possession, Custody or Control.**
19 Microsoft objects to Plaintiffs' discovery requests to the extent they seek information that is
20 not in Microsoft's possession, custody or control.

21 9. **Information Already in Plaintiffs' Possession or Otherwise Available.**
22 Microsoft objects to Plaintiffs' discovery requests to the extent they seek information already
23 within Plaintiffs' possession, publicly available or otherwise available to Plaintiffs from other
24 source(s) equally convenient, less burdensome or less expensive.

25 10. For the convenience of the parties and the Court, Microsoft's counsel has
26 electronically scanned Plaintiffs' requests for admissions to create a new document that

27
Microsoft's Objections and Responses to Plaintiffs'
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1 contains both the original requests for admissions and Microsoft's responses and objections to
2 each. Any deviation from the original discovery requests is unintentional.

3
4 Subject to the foregoing objections, Microsoft responds to the individual Requests for
5 Admissions as follows:

6
7 1. Exhibit A is a true and correct copy of the Microsoft "Windows Vista
8 Capable" logo.

9 **RESPONSE:**

10 Microsoft incorporates each of its General Objections as if fully set forth here.

11 Subject to and without waiver of its foregoing objections, Microsoft admits this
12 request.

13
14
15 2. Microsoft developed the term "Windows Vista Capable."

16 **RESPONSE:**

17 Microsoft incorporates each of its General Objections as if fully set forth here.

18 Subject to and without waiver of its foregoing objections, Microsoft admits this
19 request.

20
21
22 3. Microsoft designed the "Windows Vista Capable" logo attached as Exhibit A.

23 **RESPONSE:**

24 Microsoft incorporates each of its General Objections as if fully set forth here.

25 Subject to and without waiver of its foregoing objections, Microsoft admits this
26 request.

27
Microsoft's Objections and Responses to Plaintiffs'
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1
2 4. "Windows Vista Capable" refers to minimum specification requirements of a
3 personal computer ("PC") that are necessary to properly run Vista Home Basic.

4 **RESPONSE:**

5 Microsoft incorporates each of its General Objections as if fully set forth here.

6 Microsoft further objects to this request on the grounds that the phrase "necessary to
7 properly run" is vague and ambiguous with respect to its intended meaning.

8
9 Subject to and without waiver of its foregoing objections, Microsoft admits only that
10 the placement of a "Windows Vista Capable" logo on a PC constituted a contractually
11 permissible statement by the OEM authorized to put it there that the PC met at least the
12 minimum hardware and other requirements for one or more editions of a Windows Vista
13 operating system to install and run. Otherwise, Microsoft denies this request.

14
15
16 5. Microsoft established the minimum specification requirements necessary for a
17 PC to be certified as "Windows Vista Capable."

18 **RESPONSE:**

19 Microsoft incorporates each of its General Objections as if fully set forth here.

20 Microsoft further objects to this request on the grounds that the word "certified" is
21 vague and ambiguous with respect to its intended meaning.

22
23 Subject to and without waiver of its foregoing objections, Microsoft admits only that
24 Microsoft established the minimum hardware and other requirements that would permit an
25 OEM to label a PC with the "Windows Vista Capable" logo. Otherwise, Microsoft denies this
26 request.

27
Microsoft's Objections and Responses to Plaintiffs'
First Set of Requests for Admissions
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1
2 6. A "Windows Vista Capable" logo sticker on a PC constituted a certification by
3 Microsoft that the PC to which it was affixed would properly run Vista Home Basic.

4 **RESPONSE:**

5 Microsoft incorporates each of its General Objections as if fully set forth here.

6 Microsoft further objects to this request on the grounds that the word "certification"
7 and the phrase "properly run" are vague and ambiguous with respect to their intended
8 meaning.
9

10 Subject to and without waiver of its foregoing objections, Microsoft denies this
11 request.
12

13 7. Exhibit B is a true and correct copy of the Microsoft "Premium Ready" logo.

14 **RESPONSE:**

15 Microsoft incorporates each of its General Objections as if fully set forth here.

16
17 Subject to and without waiver of its foregoing objections, Microsoft denies this
18 request as stated and admits only that Exhibit B is a true and correct copy of the "Premium
19 Ready" designation. By way of further response, a "Premium Ready" designation constituted
20 a contractually permissible statement by the OEM authorized to make it that the PC met at
21 least the minimum hardware and other requirements for a Windows Vista Premium edition, as
22 described in the applicable logo license agreement and OEM marketing bulletin, and that the
23 PC qualified for and bore the "Windows Vista Capable" logo.
24
25
26
27

8. Microsoft developed the term "Premium Ready."

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Subject to and without waiver of its foregoing objections, Microsoft admits this request.

9. Microsoft designed the "Premium Ready" logo attached as Exhibit B.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Subject to and without waiver of its foregoing objections, Microsoft denies this request as stated. Microsoft admits only that it designed the stylized form of the "Premium Ready" designation attached to Plaintiffs' Requests as Exhibit B.

10. "Premium Ready" refers to minimum specification requirements of a PC that are necessary to properly run Vista Home Premium.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Microsoft further objects to this request on the grounds that "necessary to properly run" is vague and ambiguous with respect to its intended meaning.

Subject to and without waiver of its foregoing objections, Microsoft admits only that a "Premium Ready" designation constituted a contractually permissible statement by the OEM authorized to make it that the PC met at least the minimum hardware and other requirements for a Windows Vista Premium edition, as described in the OEM marketing bulletin and the

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1 applicable logo license agreement, and that the PC qualified for and bore the "Windows Vista
2 Capable" logo. Otherwise, Microsoft denies this request.

3
4 11. Microsoft established the minimum specification requirements necessary for a
5 PC to be certified as "Premium Ready."

6 **RESPONSE:**

7 Microsoft incorporates each of its General Objections as if fully set forth here.

8 Microsoft further objects to this request on the grounds that the word "certified" is
9 vague and ambiguous with respect to its intended meaning.
10

11 Subject to and without waiver of its foregoing objections, Microsoft admits only that
12 Microsoft established the minimum hardware and other requirements that would permit an
13 OEM to designate a PC as "Premium Ready." Otherwise, Microsoft denies this request.
14

15
16 12. A "Premium Ready" logo sticker on a PC constituted a certification by
17 Microsoft that the PC to which it was affixed would properly run Vista Home Premium.

18 **RESPONSE:**

19 Microsoft incorporates each of its General Objections as if fully set forth here.

20 Microsoft further objects to this request on the grounds that the word "certification"
21 and the phrase "properly run" are vague and ambiguous with respect to their intended
22 meaning.
23

24 Subject to and without waiver of its foregoing objections, Microsoft admits only that a
25 "Premium Ready" designation constituted a contractually permissible statement by the OEM
26 authorized to make it that the PC met at least the minimum hardware and other requirements
27

1 for the Windows Vista Premium editions, as described in the applicable logo license
2 agreement and OEM marketing bulletin, and that the PC qualified for and bore the "Windows
3 Vista Capable" logo. Otherwise, Microsoft denies this request.

4
5 13. A PC certified by Microsoft as "Premium Ready" also had affixed to it a
6 "Windows Vista Capable" sticker.

7 **RESPONSE:**

8 Microsoft incorporates each of its General Objections as if fully set forth here.

9 Microsoft further objects to this request on the grounds that the word "certified" is
10 vague and ambiguous with respect to its intended meaning.

11 Subject to and without waiver of its foregoing objections, Microsoft admits only that
12 OEMs were authorized to designate a PC as "Premium Ready" if the PC met the minimum
13 hardware and other requirements for a Windows Vista Premium operating system and
14 qualified for and bore the "Windows Vista Capable" logo. Otherwise, Microsoft denies this
15 request.
16

17
18 14. The "Windows Vista Capable" sticker and the "Premium Ready" sticker are
19 two separate and distinct stickers.
20

21 **RESPONSE:**

22 Microsoft incorporates each of its General Objections as if fully set forth here.

23 Subject to and without waiver of its foregoing objections, Microsoft denies this
24 request as stated. Microsoft admits only that the "Windows Vista Capable" logo is something
25 separate and distinct from the "Premium Ready" designation. The "Windows Vista Capable"
26 logo constituted a contractually permissible statement by the OEM authorized to place it there
27

Microsoft's Objections and Responses to Plaintiffs'
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1 that the PC met at least the minimum hardware and other requirements for one or more
2 editions of a Windows Vista operating system to install and run. A PC could be designated as
3 "Premium Ready" if the PC met the minimum hardware and other requirements for a
4 Windows Vista Premium operating system and qualified for and bore the "Windows Vista
5 Capable" logo.

6
7 15. The "Windows Vista Capable" sticker does not indicate which version of Vista
8 the PC to which it is affixed is capable of running.
9

10 **RESPONSE:**

11 Microsoft incorporates each of its General Objections as if fully set forth here.

12 Subject to and without waiver of its foregoing objections, Microsoft admits that the
13 "Windows Vista Capable" logo, viewed in isolation and without reference to any other
14 required disclosures that accompanied the PC and were widely available to prospective
15 purchasers, does not indicate which Windows Vista features or editions the PC to which it is
16 affixed is capable of providing. By way of further response, the "Windows Vista Capable"
17 logo was a contractually permissible statement by the OEM authorized to place it there that
18 the PC met at least the minimum hardware and other requirements for one or more editions of
19 a Windows Vista operating system to install and run. In addition, the applicable logo license
20 agreement required that OEMs include the following statement "in a conspicuous size and
21 place" on product packaging and on any point-of-purchase displays and in-store marketing
22 materials:
23
24

25 Not all Windows Vista™ features are available for use on all
26 Windows Vista Capable PCs. All Windows Vista Capable PCs
27 will run the core experiences of Windows Vista, such as
innovations in organizing and finding information, security and

Microsoft's Objections and Responses to Plaintiffs'
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1 reliability. Some features available in premium editions of
2 Windows Vista—like the new Windows® Aero™ user
3 interface—require advanced or additional hardware. Check
4 www.windowsvista.com/getready for details.

5 Microsoft, OEMs, resellers, publishers, and others made this and other information about the
6 features of Windows Vista editions and the hardware needed to provide their features widely
7 available to prospective purchasers.

8 16. The “Windows Vista Capable” sticker does not indicate that the PC to which it
9 is affixed can only properly run Vista Home Basic.

10 **RESPONSE:**

11 Microsoft incorporates each of its General Objections as if fully set forth here.

12 Microsoft further objects to this request on the grounds that the word “indicate” and
13 the phrase “properly run” are vague and ambiguous with respect to their intended meaning.

14 Subject to and without waiver of its foregoing objections, Microsoft denies this
15 request. By way of further response, the “Windows Vista Capable” logo was a contractually
16 permissible statement by the OEM authorized to place it there that the PC met at least the
17 minimum hardware and other requirements for one or more editions of a Windows Vista
18 operating system to install and run. Many PCs bearing the “Windows Vista Capable” logo
19 will run the features of Windows Vista Premium editions.
20
21

22
23 17. Prior to the launch of Vista, Microsoft considered using a logo to be affixed to
24 PCs other than the “Windows Vista Capable” logo that did designate Basic as the version of
25 Vista that was being certified to work with PCs to which the logo would be affixed.
26
27

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Microsoft further objects on the grounds that this request does not seek information that is relevant to class certification.

18. Exhibit C is a true and correct copy of a logo that Microsoft considered using as a sticker to be affixed to PCs prior to the launch of Vista in order to indicate to consumers that the PCs had been tested to ensure they will work with Windows Vista Home Basic.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Microsoft further objects on the grounds that this request does not seek information that is relevant to class certification.

19. Microsoft considered using a logo to be affixed to PCs prior to the launch of Vista that designated Premium as the version of Vista that was being certified to work with PCs to which the logo would be affixed.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Microsoft further objects to this request on the grounds that the phrase "certified to work with PCs" is vague and ambiguous with respect to its intended meaning.

Microsoft further objects on the grounds that this request does not seek information that is relevant to class certification.

1 20. Microsoft considered using a logo to be affixed to computers prior to the
2 launch of Vista that designated Business as the version of Vista that was being certified to
3 work with PCs to which the logo would be affixed.

4 **RESPONSE:**

5 Microsoft incorporates each of its General Objections as if fully set forth here.

6 Microsoft further objects to this request on the grounds that the phrase “certified to
7 work with PCs” is vague and ambiguous with respect to its intended meaning.

8 Microsoft further objects on the grounds that this request does not seek information
9 that is relevant to class certification.
10

11
12 21. Microsoft considered using a logo to be affixed to computers prior to the
13 launch of Vista that designated Ultimate as the version of Vista that was being certified to
14 work with PCs to which the logo would be affixed.

15 **RESPONSE:**

16 Microsoft incorporates each of its General Objections as if fully set forth here.

17 Microsoft further objects to this request on the grounds that the phrase “certified to
18 work with PCs” is vague and ambiguous with respect to its intended meaning.

19 Microsoft further objects on the grounds that this request does not seek information
20 that is relevant to class certification.
21

22
23 22. The “Windows Vista Capable” sticker does not indicate that the PC to which it
24 is affixed cannot properly run Vista Home Premium.
25
26
27

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Microsoft further objects to this request on the grounds that the word "indicate" and the phrase "necessary to properly run" are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objections, Microsoft denies this request and incorporates by reference its response to Request for Admission No. 15. By way of further response, the "Windows Vista Capable" logo was a contractually permissible statement by the OEM authorized to place it there that the PC met at least the minimum hardware and other requirements for one or more editions of a Windows Vista operating system to install and run. Many PCs bearing the Windows Vista Capable logo provide the features of Windows Vista Premium editions.

23. Microsoft did not require retailers which sold PCs designated as "Windows Vista Capable" to consumers, to provide consumers, at the time of sale, with an explanation as to the meaning of "Windows Vista Capable."

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Microsoft further objects to this request on the grounds that the phrases "at the time of sale" and "explanation as to the meaning" are vague and ambiguous with respect to their intended meaning. Microsoft also objects to the term "retailers" as vague and ambiguous. For purposes of all its responses to these Requests for Admissions, Microsoft understands the

1 term to refer to non-OEM companies (e.g., Best Buy) that sold PCs with a Microsoft
2 operating system pre-installed.

3 Subject to and without waiver of its foregoing objections, Microsoft denies this
4 request because it denies that it had the power to require retailers to take actions or not take
5 actions with respect to the "Windows Vista Capable" program. That program refers to and
6 arose out of contractual relationships between Microsoft and OEMs, not retailers. The
7 applicable logo license agreement and OEM marketing bulletin required the OEMs to provide
8 end users with information about the capabilities of PCs that bore the "Windows Vista
9 Capable" logo, as set forth above. Microsoft did develop and make marketing materials
10 available to retailers concerning the "Windows Vista Capable" program, although Microsoft
11 could not require retailers to use those materials.
12

13
14 24. Microsoft did not advise retailers which sold PCs designated as "Windows
15 Vista Capable" to consumers, to provide consumers, at the time of sale, with an explanation
16 as to the meaning of "Windows Vista Capable."
17

18 **RESPONSE:**

19 Microsoft incorporates each of its General Objections as if fully set forth here.

20 Subject to and without waiver of its foregoing objections, including Microsoft's
21 objection to and definition of the term "retailers," Microsoft denies this request. By way of
22 further response, Microsoft did develop and make marketing materials available to retailers
23 concerning the "Windows Vista Capable" program, although Microsoft could not require
24 retailers to use those materials.
25
26
27

1 25. Microsoft did not require retailers which sold PCs designated as "Windows
2 Vista Capable" to consumers, to provide consumers, at the time of sale, with an explanation
3 as to the limitations of "Windows Vista Capable."

4 RESPONSE:

5 Microsoft incorporates each of its General Objections as if fully set forth here.

6 Microsoft further objects to this request on the grounds that the phrases "at the time of
7 sale" and "explanation as to the limitations" are vague and ambiguous with respect to their
8 intended meaning.
9

10 Subject to and without waiver of its foregoing objections, including Microsoft's
11 objection to and definition of the term "retailers," Microsoft denies that it had the power to
12 require retailers to take actions or not take actions with respect to the "Windows Vista
13 Capable" program because that program refers to and arose out of contractual relationships
14 between Microsoft and OEMs, not retailers. The applicable logo license agreement and OEM
15 marketing bulletin required the OEMs to provide end users with information about the
16 capabilities of PCs that bore the "Windows Vista Capable" logo, as set forth above.
17 Microsoft did develop and make marketing materials available to retailers concerning the
18 "Windows Vista Capable" program, although Microsoft could not require retailers to use
19 those materials.
20

21
22 26. Microsoft did not advise retailers which sold PCs designated as "Windows
23 Vista Capable" to consumers, to provide consumers, at the time of sale, with an explanation
24 as to the limitations of "Windows Vista Capable".
25
26
27

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Subject to and without waiver of its foregoing objections, including Microsoft's objection to and definition of the term "retailers," Microsoft denies this request. By way of further response, Microsoft did develop and make marketing materials available to retailers concerning the "Windows Vista Capable" program, although Microsoft could not require retailers to use those materials.

27. Microsoft did not require retailers which sold PCs designated as "Windows Vista Capable" to consumers, to provide consumers, at the time of sale, with written information as to the meaning of "Windows Vista Capable."

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Microsoft further objects to this request on the grounds that the phrases "at the time of sale" and "as to the meaning of" are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objections, including Microsoft's objection to and definition of the term "retailers," Microsoft denies that it had the power to require retailers to take actions or not take actions with respect to the "Windows Vista Capable" program because that program refers to and arose out of contractual relationships between Microsoft and OEMs, not retailers. The applicable logo license agreement and OEM marketing bulletin required the OEMs to provide end users with information about the capabilities of PCs that bore the "Windows Vista Capable" logo, as set forth above.

1 Microsoft did develop and make marketing materials available to retailers concerning the
2 "Windows Vista Capable" program, although Microsoft could not require retailers to use
3 those materials.

4
5 28. Microsoft did not advise retailers which sold PCs designated as "Windows
6 Vista Capable" to consumers, to provide consumers, at the time of sale, with written
7 information as to the meaning of "Windows Vista Capable."

8
9 **RESPONSE:**

10 Microsoft incorporates each of its General Objections as if fully set forth here.

11 Subject to and without waiver of its foregoing objections, including Microsoft's
12 objection to and definition of the term "retailers," Microsoft denies this request. By way of
13 further response, Microsoft did develop and make marketing materials available to retailers
14 concerning the "Windows Vista Capable" program, although Microsoft could not require
15 retailers to use those materials.

16
17
18 29. Microsoft did not require retailers which sold PCs designated as "Windows
19 Vista Capable" to consumers, to provide consumers, at the time of sale, with written
20 information as to the limitations of "Windows Vista Capable."

21 **RESPONSE:**

22 Microsoft incorporates each of its General Objections as if fully set forth here.

23
24 Microsoft further objects to this request on the grounds that the phrases "at the time of
25 sale" and "as to the limitations of" are vague and ambiguous with respect to their intended
26 meaning.

1 Subject to and without waiver of its foregoing objections, including Microsoft's
2 objection to and definition of the term "retailers," Microsoft denies that it had the power to
3 require retailers to take actions or not take actions with respect to the "Windows Vista
4 Capable" program because that program refers to and arose out of contractual relationships
5 between Microsoft and OEMs, not retailers. The applicable logo license agreement and OEM
6 marketing bulletin required the OEMs to provide end users with information about the
7 capabilities of PCs that bore the "Windows Vista Capable" logo, as set forth above.
8 Microsoft did develop and make marketing materials available to retailers concerning the
9 "Windows Vista Capable" program, although Microsoft could not require retailers to use
10 those materials.
11
12

13 30. Microsoft did not advise retailers which sold PCs designated as "Windows
14 Vista Capable" to consumers, to provide consumers, at the time of sale, with written
15 information as to the limitations of "Windows Vista Capable."
16

17 **RESPONSE:**

18 Microsoft incorporates each of its General Objections as if fully set forth here.

19 Subject to and without waiver of its foregoing objections, including Microsoft's
20 objection to and definition of the term "retailers," Microsoft denies this request. By way of
21 further response, Microsoft did develop and make marketing materials available to retailers
22 concerning the "Windows Vista Capable" program, although Microsoft could not require
23 retailers to use those materials.
24
25
26
27

31. Microsoft did not require retailers which sold PCs designated as "Windows Vista Capable" to consumers, to display materials for the benefit of consumers that explained the meaning of "Windows Vista Capable."

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Microsoft further objects to this request on the grounds that the phrase "display materials for the benefit of consumers" and "meaning of" are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objections, including Microsoft's objection to and definition of the term "retailers," Microsoft denies that it had the power to require retailers to take actions or not take actions with respect to the "Windows Vista Capable" program because that program refers to and arose out of contractual relationships between Microsoft and OEMs, not retailers. The applicable logo license agreement and OEM marketing bulletin required the OEMs to provide end users with information about the capabilities of PCs that bore the "Windows Vista Capable" logo, as set forth above. Microsoft did develop and make marketing materials available to retailers concerning the "Windows Vista Capable" program, although Microsoft could not require retailers to use those materials.

32. Microsoft did not advise retailers which sold PCs designated as "Windows Vista Capable" to consumers, to display materials for the benefit of consumers that explained the meaning of "Windows Vista Capable."

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Subject to and without waiver of its foregoing objections, including Microsoft's objection to and definition of the term "retailers," Microsoft denies this request. By way of further response, Microsoft did develop and make marketing materials available to retailers concerning the "Windows Vista Capable" program, although Microsoft could not require retailers to use those materials.

33. Microsoft did not require retailers which sold to consumers PCs designated as "Windows Vista Capable" to display materials for the benefit of consumers that explained the limitations of that designation.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Microsoft further objects to this request on the grounds that the phrase "display materials for the benefit of consumers" and "limitations of" are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objections, including Microsoft's objection to and definition of the term "retailers," Microsoft denies that it had the power to require retailers to take actions or not actions with respect to the "Windows Vista Capable" program because that program refers to and arose out of contractual relationships between Microsoft and OEMs, not retailers. The applicable logo license agreement and OEM marketing bulletin required the OEMs to provide end users with information about the capabilities of PCs that bore the "Windows Vista Capable" logo, as set forth above.

1 Microsoft did develop and make marketing materials available to retailers concerning the
2 "Windows Vista Capable" program, although Microsoft could not require retailers to use
3 those materials.

4
5 34. Microsoft did not advise retailers which sold to consumers PCs designated as
6 "Windows Vista Capable" to display materials for the benefit of consumers that explained the
7 limitations of that designation.
8

9 **RESPONSE:**

10 Microsoft incorporates each of its General Objections as if fully set forth here.

11 Subject to and without waiver of its foregoing objections, including Microsoft's
12 objection to and definition of the term "retailers," Microsoft denies this request. By way of
13 further response, Microsoft did develop and make marketing materials available to retailers
14 concerning the "Windows Vista Capable" program, although Microsoft could not require
15 retailers to use those materials.
16

17
18 35. Prior to January 30, 2007, retailers that sold PCs designated as "Windows
19 Vista Capable" to consumers did not provide consumers with an opportunity to compare a PC
20 actually running Vista Home Basic with a PC actually running Vista Home Premium or Vista
21 Ultimate.
22

23 **RESPONSE:**

24 Microsoft incorporates each of its General Objections as if fully set forth here.

25 Subject to and without waiver of its foregoing objections, including Microsoft's
26 objection to and definition of the term "retailers," and after reasonable inquiry, Microsoft can
27

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1 neither admit nor deny this request as stated. Microsoft does not know whether, before
2 January 30, 2007, any or some retailers that sold PCs designated as "Windows Vista Capable"
3 to consumers provided consumers with an opportunity to compare a PC actually running Vista
4 Home Basic with a PC actually running Vista Home Premium or Vista Ultimate.

5
6 36. Prior to at least January 30, 2007, Microsoft did not authorize or permit
7 retailers that sold PCs designated as "Windows Vista Capable" to consumers to provide
8 consumers with an opportunity to compare a PC actually running Vista Home Basic with a PC
9 actually running Vista Home Premium or Vista Ultimate.
10

11 **RESPONSE:**

12 Microsoft incorporates each of its General Objections as if fully set forth here.

13 Subject to and without waiver of its foregoing objections, including Microsoft's
14 objection to and definition of the term "retailers," and after reasonable inquiry, Microsoft can
15 neither admit nor deny this request as stated. Microsoft did not have the power to "authorize
16 or permit" retailers that sold PCs designated as "Windows Vista Capable" to consumers (or to
17 refuse to authorize or permit such retailers) to provide consumers with an opportunity to
18 compare a PC actually running Vista Home Basic with a PC actually running Vista Home
19 Premium or Vista Ultimate.
20

21
22 37. Prior to January 30, 2007, retailers that sold PCs designated as "Windows
23 Vista Capable" to consumers did not provide consumers with an opportunity to observe a PC
24 actually running Vista Home Basic.
25
26
27

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Subject to and without waiver of its foregoing objections, including Microsoft's objection to and definition of the term "retailers," and after reasonable inquiry, Microsoft can neither admit nor deny this request as stated. Microsoft does not know whether, before January 30, 2007, any or some retailers that sold PCs designated as "Windows Vista Capable" to consumers provided consumers with an opportunity to observe a PC actually running Vista Home Basic.

38. Prior to January 30, 2007, Microsoft did not authorize or permit retailers that sold PCs designated as "Windows Vista Capable" to consumers to provide consumers with an opportunity to observe a PC actually running Vista Home Basic.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Subject to and without waiver of its foregoing objections, including Microsoft's objection to and definition of the term "retailers," and after reasonable inquiry, Microsoft can neither admit nor deny this request as stated. Microsoft did not have the power to "authorize or permit" retailers that sold PCs designated as "Windows Vista Capable" to consumers (or to refuse to authorize or permit such retailers) to provide consumers with an opportunity to observe a PC actually running Vista Home Basic.

39. Prior to January 30, 2007, retailers that sold PCs designated as "Windows Vista Capable" to consumers did provide consumers with an opportunity to observe a PC actually running Vista Home Premium or Vista Ultimate.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Subject to and without waiver of its foregoing objections, including Microsoft's objection to and definition of the term "retailers," and after reasonable inquiry, Microsoft can neither admit nor deny this request as stated. Microsoft does not know whether, before January 30, 2007, any or some retailers that sold PCs designated as "Windows Vista Capable" to consumers provided consumers with an opportunity to observe a PC actually running Vista Home Premium or Vista Ultimate.

40. Prior to January 30, 2007, Microsoft did authorize retailers that sold PCs designated as "Windows Vista Capable" to consumers to provide consumers with an opportunity to observe a PC actually running Vista Home Premium or Vista Ultimate.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Subject to and without waiver of its foregoing objections, including Microsoft's objection to and definition of the term "retailers," and after reasonable inquiry, Microsoft can neither admit nor deny this request as stated. Microsoft did not have the power to "authorize" retailers that sold PCs designated as "Windows Vista Capable" to consumers (or to refuse to authorize such retailers) to provide consumers with an opportunity to observe a PC actually running Vista Home Premium or Vista Ultimate.

1
2 41. Microsoft did not authorize retailers that sold PCs designated as "Windows
3 Vista Capable" to consumers to modify the "Windows Vista Capable" sticker.

4 **RESPONSE:**

5 Microsoft incorporates each of its General Objections as if fully set forth here.

6 Subject to and without waiver of its foregoing objections, including Microsoft's
7 objection to and definition of the term "retailers," Microsoft admits this request.
8

9
10 42. Microsoft prohibited retailers that sold PCs designated as "Windows Vista
11 Capable" to consumers from modifying the "Windows Vista Capable" sticker.

12 **RESPONSE:**

13 Microsoft incorporates each of its General Objections as if fully set forth here.

14 Subject to and without waiver of its foregoing objections, including Microsoft's
15 objection to and definition of the term "retailers," Microsoft denies the request as stated. By
16 way of further response, if retailers or others modified the "Windows Vista Capable" logo
17 without Microsoft's permission, applicable trademark law would have provided Microsoft
18 with remedies.
19

20
21 43. "Windows Vista Capable" stickers were intended by Microsoft to encourage
22 consumers not to delay their purchases of new PCs until the actual release of Vista.
23

24 **RESPONSE:**

25 Microsoft incorporates each of its General Objections as if fully set forth here.
26
27

1 Subject to and without waiver of its foregoing objections, Microsoft admits only that
2 the "Windows Vista Capable" logo was intended in part to encourage consumers not to delay
3 their purchases of new PCs until the release of Windows Vista. Otherwise, Microsoft denies
4 this request as stated.

5
6 44. The Vista Upgrade Express program was intended by Microsoft to encourage
7 consumers not to delay their purchases of new PCs until the actual release of Vista.

8
9 **RESPONSE:**

10 Microsoft incorporates each of its General Objections as if fully set forth here.

11 Subject to and without waiver of its foregoing objections, Microsoft admits only that
12 the "Windows Vista Upgrade Express" program was intended in part to encourage consumers
13 not to delay their purchases of new PCs until the release of Windows Vista. Otherwise,
14 Microsoft denies this request as stated.

15
16
17 45. "Windows Vista Capable" stickers were intended by Microsoft to maintain
18 consumer demand for new PCs, with Windows XP pre-installed, prior to the actual release of
19 Vista.

20 **RESPONSE:**

21 Microsoft incorporates each of its General Objections as if fully set forth here.

22 Microsoft further objects to this request on the grounds that "maintain consumer
23 demand" is vague and ambiguous with respect to its intended meaning.

24
25 Subject to and without waiver of its foregoing objections, Microsoft admits only that
26 the "Windows Vista Capable" logo was intended in part to encourage consumers not to delay
27

1 their purchases of new PCs until the release of Windows Vista. Otherwise, Microsoft denies
2 this request.

3
4 46. The Vista Upgrade Express program was intended by Microsoft to maintain
5 consumer demand for new PCs, with Windows XP pre-installed, prior to the actual release of
6 Vista.

7 **RESPONSE:**

8 Microsoft incorporates each of its General Objections as if fully set forth here.

9
10 Microsoft further objects to this request on the grounds that "maintain consumer
11 demand" is vague and ambiguous with respect to its intended meaning.

12 Subject to and without waiver of its foregoing objections, Microsoft admits only that
13 the "Windows Vista Express Upgrade" program was intended in part to encourage consumers
14 not to delay their purchases of new PCs until the release of Windows Vista. Otherwise,
15 Microsoft denies this request.

16
17
18 47. Microsoft received a financial benefit from the sale of PCs designated as
19 "Windows Vista Capable."

20 **RESPONSE:**

21 Microsoft incorporates each of its General Objections as if fully set forth here.

22
23 Subject to and without waiver of its foregoing objections, Microsoft admits this
24 request. By way of further response, Microsoft also received a financial benefit from PCs
25 containing the Windows XP operating system that were not designated as "Windows Vista
26 Capable."

27
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1
2 48. Since at least January 30, 2007, Microsoft has offered Windows Defender as a
3 free download to consumers running Windows XP.

4 **RESPONSE:**

5 Microsoft incorporates each of its General Objections as if fully set forth here.

6 Subject to and without waiver of its foregoing objections, Microsoft admits this
7 request, although there are significant functionality differences between the version of
8 Windows Defender that is part of Windows Vista and the version that is available as a free
9 download to consumers running Windows XP.
10

11
12 49. Since at least January 30, 2007, Microsoft has offered Windows Firewall as a
13 free download to consumers running Windows XP.

14 **RESPONSE:**

15 Microsoft incorporates each of its General Objections as if fully set forth here.

16 Subject to and without waiver of its foregoing objections, Microsoft denies this
17 request.
18

19
20 50. Since at least January 30, 2007, Microsoft has offered Instant Search as a free
21 download to consumers running Windows XP.

22 **RESPONSE:**

23 Microsoft incorporates each of its General Objections as if fully set forth here.

24 Subject to and without waiver of its foregoing objections, Microsoft denies this
25 request as stated. Microsoft admits only that an update to the Windows XP search function is
26

27
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1 available as a free download. This free download is called Windows Desktop Search. It is
2 not called "Instant Search."

3
4 51. Since at least January 30, 2007, Microsoft has offered Windows Internet
5 Explorer 7 as a free download to consumers running Windows XP.

6 **RESPONSE:**

7 Microsoft incorporates each of its General Objections as if fully set forth here.

8
9 Subject to and without waiver of its foregoing objections, Microsoft admits only that a
10 version of Windows Internet Explorer 7 has been available as a free download to Windows
11 XP users since at least January 30, 2007, but that version does not offer all of the features of
12 Internet Explorer 7 when included in Windows Vista. Otherwise, Microsoft denies this
13 request.

14
15 52. Since at least January 30, 2007, Microsoft has offered Network and Sharing
16 Center as a free download to consumers running Windows XP.

17 **RESPONSE:**

18 Microsoft incorporates each of its General Objections as if fully set forth here.

19
20 Subject to and without waiver of its foregoing objections, Microsoft denies this
21 request.

22
23 53. Since at least January 30, 2007, Instant Search has been available, without
24 charge, to consumers running Windows XP.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Subject to and without waiver of its foregoing objections, Microsoft denies this request as stated. Microsoft admits only that an update to the Windows XP search function has been available, without charge, to Windows XP users. This free download is called Windows Desktop Search. It is not called "Instant Search."

54. Since at least January 30, 2007, Network and Sharing Center has been available, without charge, to consumers running Windows XP.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Subject to and without waiver of its foregoing objections, Microsoft denies this request.

55. The End User License Agreement ("EULA") attached as Exhibit D is a true and correct copy of the Windows XP operating system EULA ("XP EULA") that applies to plaintiff and every member of the class as defined in the First Amended Complaint ("Class Members").

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Subject to and without waiver of its foregoing objections, Microsoft denies this request.

1 56. The EULA attached as Exhibit E is a true and correct copy of the Windows XP
2 operating system EULA ("XP Upgrade EULA") that applies to every end user who purchased
3 an upgrade to the Windows Home XP operating system at any time from March 1, 2006 to
4 January 30, 2007.

5 **RESPONSE:**

6 Microsoft incorporates each of its General Objections as if fully set forth here.

7 Subject to and without waiver of its foregoing objections, Microsoft denies this
8 request.
9

10
11 57. The EULA attached as Exhibit F is a true and correct copy of the Windows
12 Vista Home Basic operating system EULA ("Vista Basic EULA") that applies to every end
13 user who has purchased a PC with the Windows Vista Home Basic operating system pre-
14 installed.

15 **RESPONSE:**

16 Microsoft incorporates each of its General Objections as if fully set forth here.

17 Subject to and without waiver of its foregoing objections, Microsoft denies this
18 request. By way of further response, OEMs are permitted to supplement (and many have
19 supplemented) the Windows Vista EULA that Microsoft provides to them with provisions or
20 protections beyond those in the Windows Vista EULA that Microsoft provides to them.
21
22

23
24 58. The EULA attached as Exhibit G is a true and correct copy of the Windows
25 Vista Home Basic operating system EULA ("Vista Basic Upgrade EULA") that applies to
26
27

1 every end user who has purchased an upgrade to the Windows Vista Home Basic operating
2 system at any time from March 1, 2006 to January 30, 2007.

3 **RESPONSE:**

4 Microsoft incorporates each of its General Objections as if fully set forth here.

5 Subject to and without waiver of its foregoing objections, Microsoft denies this
6 request as stated. By way of further response, Microsoft released Windows Vista to the
7 general public on January 30, 2007, and admits only that the Vista Basic Upgrade EULA
8 applies to every end user who purchased an upgraded license from another Microsoft
9 operating system to Windows Vista Home Basic on January 30, 2007.
10

11
12 59. Microsoft drafted the XP EULA.

13 **RESPONSE:**

14 Microsoft incorporates each of its General Objections as if fully set forth here.

15 Subject to and without waiver of its foregoing objections, Microsoft admits this
16 request.
17

18
19 60. Microsoft drafted the XP Upgrade EULA.

20 **RESPONSE:**

21 Microsoft incorporates each of its General Objections as if fully set forth here.

22 Subject to and without waiver of its foregoing objections, Microsoft admits this
23 request.
24
25
26
27

1 61. Microsoft drafted the Vista Basic EULA.

2 **RESPONSE:**

3 Microsoft incorporates each of its General Objections as if fully set forth here.

4 Subject to and without waiver of its foregoing objections, Microsoft admits this
5 request.

6
7 62. Microsoft drafted the Vista Upgrade EULA.

8 **RESPONSE:**

9
10 Microsoft incorporates each of its General Objections as if fully set forth here.

11 Microsoft further objects to this request because the term "Vista Upgrade EULA" is
12 vague and ambiguous with respect to its intended meaning. There is no exhibit attached to
13 Plaintiffs' Requests that Plaintiffs have defined as the "Vista Upgrade EULA."
14

15
16 63. The agreement attached hereto as Exhibit H is a true a true and correct copy of
17 the Windows XP license agreement ("OEM License Agreement") between Microsoft and all
18 OEMs who sold PCs with Windows XP pre-installed at any time from March 1, 2006 to
19 January 30, 2007.

20 **RESPONSE:**

21 Microsoft incorporates each of its General Objections as if fully set forth here.

22 Subject to and without waiver of its foregoing objections, Microsoft denies this
23 request.
24

64. Microsoft drafted the OEM License Agreement.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Microsoft further objects to this request because, in the context of this request, the phrase "the OEM License Agreement" is vague and ambiguous with respect to its intended meaning.

Subject to and without waiver of its foregoing objections, and assuming that "the OEM License Agreement" refers to the document attached to Plaintiffs' Requests as Exhibit H, Microsoft admits this request.

65. Under the terms of any and all OEM license agreements in effect from March 1, 2006 to January 30, 2007, Microsoft required OEMs to make the XP EULA a condition of the Class Members' ability to activate the Windows XP operating system that came pre-installed on their PCs.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Subject to and without waiver of its foregoing objections, Microsoft denies this request. Microsoft admits only that its licensing agreements with OEMs required the OEMs to distribute the XP EULA if they pre-installed the Windows XP operating system to which the XP EULA attached to Plaintiffs' Requests as Exhibit D pertains.

66. OEMs were not given discretion by Microsoft to make any modifications to the XP EULA.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Subject to and without waiver of its foregoing objections, Microsoft admits this request. By way of further response, however, OEMs were permitted to supplement (and many did supplement) the XP EULA with provisions or protections beyond those in the XP EULA.

67. OEMs were prohibited by Microsoft from making any modifications to the XP EULA.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Subject to and without waiver of its foregoing objections, Microsoft admits this request. By way of further response, however, OEMs were permitted to supplement (and many did supplement) the XP EULA with provisions or protections beyond those in the XP EULA.

68. The XP Upgrade EULA constituted a contract between Microsoft and the end user.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Subject to and without waiver of its foregoing objections, Microsoft admits this request.

1 69. The XP Upgrade EULA contains provisions that Microsoft intended to benefit
2 and/or protect the interests of Microsoft.

3 **RESPONSE:**

4 Microsoft incorporates each of its General Objections as if fully set forth here.

5 Subject to and without waiver of its foregoing objections, Microsoft admits this
6 request. By way of further response, Microsoft admits that the XP Upgrade EULA also
7 contains provisions that benefit and/or protect the interests of the end user.
8

9
10 70. The XP EULA contains provisions that benefit and/or protect the interests of
11 Microsoft.

12 **RESPONSE:**

13 Microsoft incorporates each of its General Objections as if fully set forth here.

14 Subject to and without waiver of its foregoing objections, Microsoft admits this
15 request. By way of further response, Microsoft admits that the XP EULA also contains
16 provisions that benefit and/or protect the interests of the OEM and the end user.
17

18
19 71. The provisions of the XP Upgrade EULA that benefit and/or protect the
20 interests of Microsoft are identical to the provisions of the XP EULA that benefit and/or
21 protect the interests of Microsoft.

22 **RESPONSE:**

23 Microsoft incorporates each of its General Objections as if fully set forth here.

24 Subject to and without waiver of its foregoing objections, Microsoft denies this
25 request.
26

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1
2 72. Microsoft required Gateway to obtain approval from Microsoft for its
3 Windows Vista advertising.

4 **RESPONSE:**

5 Microsoft incorporates each of its General Objections as if fully set forth here.

6 Subject to and without waiver of its foregoing objections, Microsoft denies this
7 request.
8

9
10 73. Microsoft required Gateway to obtain approval from Microsoft for its
11 Windows Vista promotional materials.

12 **RESPONSE:**

13 Microsoft incorporates each of its General Objections as if fully set forth here.

14 Subject to and without waiver of its foregoing objections, Microsoft denies this
15 request.
16

17
18 74. Microsoft required PC retailers to obtain approval from Microsoft for their
19 Windows Vista advertising.

20 **RESPONSE:**

21 Microsoft incorporates each of its General Objections as if fully set forth here.

22 Subject to and without waiver of its foregoing objections, Microsoft denies this
23 request.
24

1 75. Microsoft required PC retailers to obtain approval from Microsoft for their
2 Windows Vista promotional materials.

3 **RESPONSE:**

4 Microsoft incorporates each of its General Objections as if fully set forth here.

5 Subject to and without waiver of its foregoing objections, Microsoft denies this
6 request.

7
8
9 76. Microsoft monitored the advertising materials of PC retailers in order to assure
10 the accuracy of such materials as related to Vista.

11 **RESPONSE:**

12 Microsoft incorporates each of its General Objections as if fully set forth here.

13 Microsoft further objects to this request on the grounds that the word "monitored" is
14 vague and ambiguous with respect to its intended meaning.

15 Subject to and without waiver of its foregoing objections, Microsoft denies this
16 request.

17
18
19 77. Microsoft monitored the advertising materials of PC retailers in order to assure
20 the accuracy of such materials as related to the "Windows Vista Capable" program.

21 **RESPONSE:**

22 Microsoft incorporates each of its General Objections as if fully set forth here.

23 Microsoft further objects to this request on the grounds that the word "monitored" is
24 vague and ambiguous with respect to its intended meaning.
25
26
27

1 Subject to and without waiver of its foregoing objections, Microsoft denies this
2 request.

3
4 78. Microsoft monitored the promotional materials of PC retailers in order to
5 assure the accuracy of such materials as related to Vista.

6 **RESPONSE:**

7 Microsoft incorporates each of its General Objections as if fully set forth here.

8 Microsoft further objects to this request on the grounds that the word "monitored" is
9 vague and ambiguous with respect to its intended meaning.
10

11 Subject to and without waiver of its foregoing objections, Microsoft denies this
12 request.

13
14 79. Microsoft monitored the promotional materials of PC retailers in order to
15 assure the accuracy of such materials as related to the "Windows Vista Capable" program.

16 **RESPONSE:**

17 Microsoft incorporates each of its General Objections as if fully set forth here.

18 Microsoft further objects to this request on the grounds that the word "monitored" is
19 vague and ambiguous with respect to its intended meaning.
20

21 Subject to and without waiver of its foregoing objections, Microsoft denies this
22 request.
23

1 80. Microsoft established procedures to minimize the likelihood of errors by PC
2 manufacturers in placing "Windows Vista Capable" stickers on PCs intended for sale to
3 consumers.

4 **RESPONSE:**

5 Microsoft incorporates each of its General Objections as if fully set forth here.

6 Microsoft further objects to this request on the grounds that the phrases "established
7 procedures" and "minimize the likelihood of errors" are vague and ambiguous with respect to
8 their intended meaning.

9 Subject to and without waiver of its foregoing objections, Microsoft admits only that
10 the applicable logo agreement contained terms intended to minimize the likelihood that a PC
11 manufacturer would place the "Windows Vista Capable" logo on a PC that did not qualify for
12 the logo. Otherwise, Microsoft denies this request.
13

14
15 81. Microsoft established procedures to eliminate the likelihood of errors by PC
16 manufacturers in placing "Windows Vista Capable" stickers on PCs intended for sale to
17 consumers.
18

19 **RESPONSE:**

20 Microsoft incorporates each of its General Objections as if fully set forth here.

21 Microsoft further objects to this request on the grounds that the phrases "established
22 procedures" and "the likelihood of errors" are vague and ambiguous with respect to their
23 intended meaning.
24

25 Subject to and without waiver of its foregoing objections, Microsoft admits only that
26 the applicable logo agreement contained terms intended to minimize the likelihood that a PC
27

1 manufacturer would place the "Windows Vista Capable" logo on a PC that did not qualify for
2 the logo. Otherwise, Microsoft denies this request.

3
4 82. Microsoft established procedures to minimize the likelihood of errors by PC
5 manufacturers in placing "Premium Ready" stickers on PCs intended for sale to consumers.

6 **RESPONSE:**

7 Microsoft incorporates each of its General Objections as if fully set forth here.

8
9 Microsoft further objects to this request on the grounds that the phrases "established
10 procedures" and "minimize the likelihood of errors" are vague and ambiguous with respect to
11 their intended meaning.

12 Microsoft further objects to this request on the grounds that the applicable logo
13 agreement did not permit PC manufacturers to place "Premium Ready" stickers on PCs.

14
15
16 83. Microsoft established procedures to eliminate the likelihood of errors by PC
17 manufacturers in placing "Premium Ready" stickers on PCs intended for sale to consumers.

18 **RESPONSE:**

19 Microsoft incorporates each of its General Objections as if fully set forth here.

20 Microsoft further objects to this request on the grounds that the phrases "established
21 procedures" and "minimize the likelihood of errors" are vague and ambiguous with respect to
22 their intended meaning.

23
24 Microsoft further objects to this request on the grounds that the applicable logo
25 agreement did not permit PC manufacturers to place "Premium Ready" stickers on PCs.

1 84. Prior to Microsoft's public use of the term "Windows Vista Capable," there
2 had been concern or opinion within Microsoft that the use of the word "capable," within the
3 term "Windows Vista Capable," could be misleading to consumers.

4 **RESPONSE:**

5 Microsoft incorporates each of its General Objections as if fully set forth here.

6 Microsoft further objects to this request on the grounds that the clause "there had been
7 concern or opinion within Microsoft" is vague and ambiguous with respect to its intended
8 meaning.
9

10 Microsoft further objects on the grounds that this request does not seek information
11 that is relevant to class certification.
12

13 85. Prior to Microsoft's public use of the term "Windows Vista Capable," there
14 had been concern or opinion within Microsoft that the use of the word "capable," within the
15 term "Windows Vista Capable," could be confusing to consumers.
16

17 **RESPONSE:**

18 Microsoft incorporates each of its General objections as if fully set forth here.

19 Microsoft further objects to this request on the grounds that the clause "there had been
20 concern or opinion within Microsoft" is vague and ambiguous with respect to its intended
21 meaning.
22

23 Microsoft further objects on the grounds that this request does not seek information
24 that is relevant to class certification.
25
26
27

1 86. Prior to Microsoft's public use of the term "Windows Vista Capable," there
2 had been concern or opinion expressed or otherwise made known to Microsoft that the use of
3 the word "capable," within the term "Windows Vista Capable," could be misleading to
4 consumers.

5 **RESPONSE:**

6 Microsoft incorporates each of its General Objections as if fully set forth here.

7 Microsoft further objects to this request on the grounds that the clause "there had been
8 concern or opinion expressed or otherwise made known to Microsoft" is vague and
9 ambiguous with respect to its intended meaning.
10

11 Microsoft further objects on the grounds that this request does not seek information
12 that is relevant to class certification.
13

14 87. Prior to Microsoft's public use of the term "Windows Vista Capable," there
15 had been concern or opinion expressed or otherwise made known to Microsoft that the use of
16 the word "capable," within the term "Windows Vista Capable," could be confusing to
17 consumers.
18

19 **RESPONSE:**

20 Microsoft incorporates each of its General Objections as if fully set forth here.

21 Microsoft further objects to this request on the grounds that the clause "there had been
22 concern or opinion expressed or otherwise made known to Microsoft" is vague and
23 ambiguous with respect to its intended meaning.
24

25 Microsoft further objects on the grounds that this request does not seek information
26 that is relevant to class certification.
27

1
2 88. Prior to the filing of this lawsuit, there had been concern or opinion within
3 Microsoft that use of the word "capable," within the term "Windows Vista Capable," could be
4 misleading to consumers.

5 **RESPONSE:**

6 Microsoft incorporates each of its General Objections as if fully set forth here.

7 Microsoft further objects to this request on the grounds that the clause "there had been
8 concern or opinion within Microsoft" is vague and ambiguous with respect to its intended
9 meaning.
10

11 Microsoft further objects on the grounds that this request does not seek information
12 that is relevant to class certification.
13

14 89. Prior to the filing of this lawsuit, there had been concern or opinion within
15 Microsoft that use of the word "capable," within the term "Windows Vista Capable," could be
16 confusing to consumers.
17

18 **RESPONSE:**

19 Microsoft incorporates each of its General Objections as if fully set forth here.

20 Microsoft further objects to this request on the grounds that the clause "there had been
21 concern or opinion within Microsoft" is vague and ambiguous with respect to its intended
22 meaning.
23

24 Microsoft further objects on the grounds that this request does not seek information
25 that is relevant to class certification.
26

27
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1 90. Prior to the filing of this lawsuit, there had been concern or opinion expressed
2 or otherwise made known to Microsoft that the use of the word "capable," within the term
3 "Windows Vista Capable," could be misleading to consumers.

4 **RESPONSE:**

5 Microsoft incorporates each of its General Objections as if fully set forth here.

6 Microsoft further objects to this request on the grounds that the clause "there had been
7 concern or opinion expressed or otherwise made known to Microsoft" is vague and
8 ambiguous with respect to its intended meaning.
9

10 Microsoft further objects on the grounds that this request does not seek information
11 that is relevant to class certification.
12

13 91. Prior to the filing of this lawsuit, there had been concern or opinion expressed
14 or otherwise made known to Microsoft that the use of the word "capable," within the term
15 "Windows Vista Capable," could be confusing to consumers.
16

17 **RESPONSE:**

18 Microsoft incorporates each of its General Objections as if fully set forth here.

19 Microsoft further objects to this request on the grounds that the clause "there had been
20 concern or opinion expressed or otherwise made known to Microsoft" is vague and
21 ambiguous with respect to its intended meaning.
22

23 Microsoft further objects on the grounds that this request does not seek information
24 that is relevant to class certification.
25
26
27

92. Windows Vista Starter and Vista Home Basic have Vista features in common.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Microsoft further objects on the grounds that the phrase "Vista features" is vague and ambiguous with respect to its intended meaning.

Microsoft further objects on the grounds that this request does not seek information that is relevant to class certification since Windows Vista Starter is not sold in developed countries, including the United States.

Subject to and without waiver of its foregoing objections, Microsoft denies this request but admits that Windows Vista Starter and Windows Vista Home Basic have some but not all features in common.

93. Windows Vista Starter and Vista Home Basic have more Vista features in common than Vista Home Basic has in common with Vista Home Premium.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Microsoft further objects on the grounds that the phrase "Vista features" is vague and ambiguous with respect to its intended meaning. Without a definition of what Plaintiffs mean by "Vista features" (e.g., whether "Vista features" means features that were never included in, or available for, any previous Windows operating system or whether it includes improvements to features that existed in previous Windows operating systems), it is impossible to respond to this request.

1 Microsoft further objects on the grounds that this request does not seek information
2 that is relevant to class certification since Windows Vista Starter is not sold in developed
3 countries, including the United States.

4
5 94. To date, more copies of Vista Home Basic have been licensed by Microsoft
6 through the "Windows Vista Capable" program, than through the combined, post-January 30,
7 2007 sales of: (i) new PCs with Vista Home Basic pre-installed; (ii) full versions of Vista
8 Home Basic; (iii) upgrade versions of Vista Home Basic; and, (iv) upgrades through the
9 Windows Anytime Upgrade program.

10
11 **RESPONSE:**

12 Microsoft incorporates each of its General Objections as if fully set forth here.

13 Microsoft further objects on the grounds that this request does not seek information
14 that is relevant to class certification.

15 Subject to and without waiver of its foregoing objections, Microsoft can neither admit
16 nor deny this request because, after reasonable inquiry, Microsoft does not have the
17 information requested and it is not readily obtainable.

18
19
20 95. To date, more copies of Vista Home Premium have been licensed by Microsoft
21 through the post-January 30, 2007 sales of new PCs with Vista Home Premium pre-installed,
22 than were licensed by Microsoft through the Windows Vista Capable, Premium Ready, and
23 Express Upgrade programs.

24
25 **RESPONSE:**

26 Microsoft incorporates each of its General Objections as if fully set forth here.

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1 Microsoft further objects on the grounds that this request does not seek information
2 that is relevant to class certification.

3 Subject to and without waiver of its foregoing objections, Microsoft can neither admit
4 nor deny this request because, after reasonable inquiry, Microsoft does not have the
5 information requested and it is not readily obtainable.

6
7 96. Exhibit I are true and correct copies of the February, 2007 (Premier Issue) and
8 the April/May 2007 (Issue 2) editions of "Windows Vista™ The Official Magazine."
9

10 **RESPONSE:**

11 Microsoft incorporates each of its General Objections as if fully set forth here.

12 Subject to and without waiver of its foregoing objections, Microsoft admits this
13 request.

14
15 97. Future US, Inc., Future pic, or an affiliated or related entity of either, secured
16 rights from Microsoft to publish "Windows Vista™ The Official Magazine."
17

18 **RESPONSE:**

19 Microsoft incorporates each of its General Objections as if fully set forth here.

20 Microsoft further objects on the grounds that the phrase "secured rights" is vague and
21 ambiguous with respect to its intended meaning.

22 Subject to and without waiver of its foregoing objections, Microsoft admits only that it
23 entered into a Publication Agreement with Future Publishing Limited ("Future") as of
24 October 13, 2005, in which Microsoft appointed Future to publish an official Windows Vista
25 magazine under the terms and conditions set forth in the agreement. The specific rights and
26

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obligations of Microsoft and Future with respect to the official Windows Vista magazine are set forth in the Publication Agreement and Microsoft therefore admits this request to the extent the Publication Agreement sets out the rights Future acquired under that agreement (which it does). Otherwise, Microsoft denies this request.

98. Microsoft has the right to control the content published in "Windows Vista™ The Official Magazine."

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Subject to and without waiver of its foregoing objections, Microsoft denies this request.

99. Prior to publication, Microsoft reviewed the content in each issue of "Windows Vista™ The Official Magazine" published to date.

RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

Subject to and without waiver of its foregoing objections, Microsoft denies this request.

100. Prior to publication, Microsoft approved the content in each issue of "Windows Vista™ The Official Magazine" published to date.

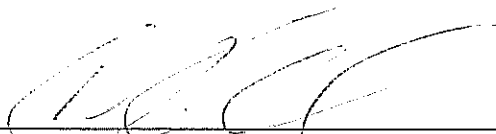
RESPONSE:

Microsoft incorporates each of its General Objections as if fully set forth here.

1 Subject to and without waiver of its foregoing objections, Microsoft denies this
2 request.

3
4 RESPONSES dated this 2nd day of August, 2007

5 **DAVIS WRIGHT TREMAINE LLP**

6
7 By 
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9 Cassandra Kinkead, WSBA #22845
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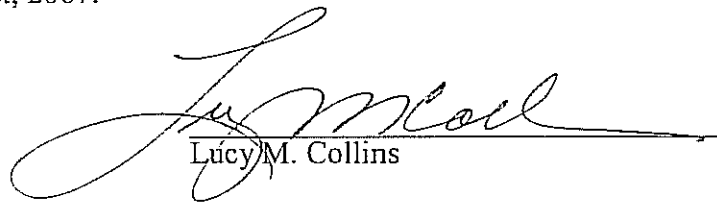
CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2007, I caused the foregoing **Microsoft's Objections and Responses to Plaintiffs' First Set of Requests for Admissions** to be served via hand delivery on the following:

Jeffrey I. Tilden
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DATED this 2nd day of August, 2007.


Lucy M. Collins

Microsoft's Objections and Responses to Plaintiffs'
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